

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION

ROBERT LESTER, #28156-034

PLAINTIFF

VS.

CIVIL ACTION NO. 5:05-cv-153 (DCB) (JCS)

UNITED STATES OF AMERICA

DEFENDANT

ORDER

This cause is before the Court on the Report and Recommendation of Magistrate Judge James C. Sumner, entered on August 2, 2006. Following entry of the Report and Recommendation, there was a motion for clarification filed by the government, which has been ruled on by the magistrate judge. There being no objection to the Report and Recommendation or the Order clarifying the Report and Recommendation, the Court finds that the report and recommendation should be adopted. Accordingly,

IT IS HEREBY ORDERED that the Report and Recommendation **docket entry 17)** is adopted as the findings of this Court;

FURTHER ORDERED that the defendant's motion to dismiss (**docket entry 10)** or in the alternative for summary judgment (**docket entry 10)** is GRANTED IN PART AND DENIED IN PART AS FOLLOWS: the motion to dismiss is granted as to the plaintiff's "post pack-out" claims, and the motion to dismiss or for summary judgment is denied as to the plaintiff's "pre-pack-out" claims, with leave to the government to file a second motion to dismiss and/or a motion for summary judgment on other grounds, within a reasonable time period, should

the government's research demonstrate the need for such a motion;

FURTHER ORDERED that the plaintiff's motion for an order for arbitration between parties (**docket entry 7**) is DENIED, there being no provision for the arbitration of the plaintiff's claims.

SO ORDERED, this the 28th day of September, 2006.

S/DAVID BRAMLETTE
UNITED STATES DISTRICT JUDGE